

REMARKS

Applicants respectfully request further examination and reconsideration in view of the arguments set forth fully below.

Rejections Under 35 U.S.C. § 103

Claims 1, 4, 6, 7, 11-22, 25-29, 32, and 33 have been rejected under 35 U.S.C. §103(a) as being anticipated by Walker (US 6,754,636).

For a §103 obviousness rejection to be proper, it must be established that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. MPEP 2143.

Applicant respectfully submits that Walker fails to disclose providing a first ask price for a particular product to a first party, wherein the first ask price is associated with and specified by a particular second party, and enabling the first party to submit a first bid price for the particular product of the particular second party in response to receiving the first ask price, as recited in Claim 1. Applicant made this argument in the Amendment dated July 30, 2008. On Page 4 of the Office Action dated October 27, 2008, Examiner appears to have agreed with Applicant's argument, stating that it was persuasive. However, it is asserted within the Office Action that receiving a pricing comparison between retailers that reveals retail pricing is used to cause a purchase response, and that it would have been obvious to try to reveal retail pricing to initiate a first party (i.e., buyer) response by Walker and incorporate it into the system of Walker since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Applicant respectfully disagrees with these assertions.

It is unclear what “the recognized need” is which is referred to within the Office Action. Applicant respectfully requests that clarification is provided regarding what is meant by “the recognized need.” Clearly there is no need in Walker to initiate a first party response. In fact, Applicant respectfully submits that Walker teaches away from providing a first ask price for a particular product to a first party (i.e., buyer), wherein the first ask price is associated with and specified by a particular second party, and enabling the first party to submit a first bid price for the particular product of the particular second party in response to receiving the first ask price. Walker is directed towards a buyer submitting a buyer offer and the purchasing system determining the appropriate seller and retailer based on the buyer offer (e.g., Walker, col. 5, lines 18-53; col. 7, lines 32-63; col. 13, lines 31-43; and FIG. 9E). In other words, the buyer in Walker does not submit a bid price in response to being provided an ask price specified by a particular second party. Instead, the buyer initiates the process by submitting his/her offer without being provided an ask price specified by a specific second party so that the purchasing system can find an appropriate seller and retailer based on the buyer offer. In this respect, the buyer is not acting in response to being provided information. Rather, the purchasing system is acting in response to being provided information by the buyer. Furthermore, the purpose of the purchasing system is to determine the appropriate seller and retailer conveniently for the buyer. In this respect, the buyer does not have to deal with the hassle of comparing information such as pricing and availability. Instead, the buyer simply indicates what he or she wants and for how much, and the purchasing system does the rest of the work, using accessible information to make a determination and relieving the buyer of this responsibility. Modifying Walker as suggested within the Office Action would significantly change the operation of Walker, requiring more work on the part of the buyer and nullifying one of the advantages of Walker’s purchasing system.

According to MPEP 2143.01(V), if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. Furthermore, according to MPEP 2143.01(VI), if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

Therefore, Applicant respectfully submits that it would not have been obvious to one skilled in the art to modify the purchasing system of Walker to include providing a first ask price for a particular product to a first party, wherein the first ask price is associated with and specified

by a particular second party, and enabling the first party to submit a first bid price for the particular product of the particular second party in response to receiving the first ask price. Accordingly Applicant respectfully submits that the independent Claim 1 is non-obvious and patentable over Walker.

Since Claims 4, 6, 7, and 11-22 depend from the independent Claim 1, Applicant respectfully submits that Claims 4, 6, 7, and 11-22 are also patentable as they contain the same limitations as the independent Claim 1.

Additionally, Claims 21 and 22 recite enabling a fourth party to facilitate consummation of the transaction between the first and second parties in conjunction with the third party via the wide area network, wherein enabling the fourth party to facilitate consummation of the transaction comprises enabling the fourth party to cover a remainder portion of the first difference. Applicant respectfully submits that Walker fails to teach enabling a fourth party to facilitate consummation of a transaction between a first and second party in conjunction with a third party by enabling the fourth party to cover a remainder portion of the difference. Within the Office Action, Col. 8, lines 22-25 in Walker is cited as disclosing a credit card company contributing \$50 towards a purchase of a home stereo if the buyer submits a credit card application and Col. 14, lines 5-8 in Walker is cited as disclosing a second group of sellers. However, there is no indication that the credit card company contribution works in conjunction with a third party to facilitate consummation of a transaction by covering a remainder portion of the difference between a bid price and an ask price. It appears to be completely isolated, rather than being used along with a third party covering part of the difference as well. Furthermore, the “second group of sellers” only refers to sellers who are sent an offer if every one of a first group of sellers rejects the offer. There is no indication that the second group of sellers work in conjunction with one another or with any type of third party to facilitate consummation of the transaction. Therefore, Applicant respectfully submits that Walker fails to teach these limitations.

Applicant respectfully submits that the same arguments made above with respect to the patentability of the independent Claim 1 are also applicable to the patentability of the independent Claims 25-27.

Since Claims 28 and 29 depend from the independent Claim 1, Applicant respectfully submits that Claims 28 and 29 are also patentable as they contain the same limitations as the independent Claim 1.

Applicant respectfully submits that the same arguments made above with respect to the patentability of the independent Claim 1 are also applicable to the patentability of the independent Claim 32.

Since Claim 33 depends from the independent Claim 32, Applicant respectfully submits that Claim 33 is also patentable as it contains the same limitations as the independent Claim 32.

Accordingly, Applicant respectfully submits that Claims 1, 4, 6, 7, 11-22, 25-29, 32, and 33 are currently in condition for allowance. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 8-10, 30 and 31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Chelliah (US 5,710,887).

Since Claims 8-10, 30 and 31 depend from the independent Claim 1, Applicant respectfully submits that Claims 8-10, 30 and 31 are also patentable as they contain the same limitations as the independent Claim 1.

Accordingly, Applicant respectfully submits that Claims 8-10, 30 and 31 are currently in condition for allowance. Reconsideration and withdrawal of the rejection is respectfully requested.

Claim 35 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Lockwood (US 5,576,951).

Since Claim 35 depends from the independent Claim 32, Applicant respectfully submits that Claim 35 is also patentable as it contains the same limitations as the independent Claim 32.

Accordingly, Applicant respectfully submits that Claim 35 is currently in condition for allowance. Reconsideration and withdrawal of the rejection is respectfully requested.

Allowable Subject Matter:

Within the Office Action, it is indicated that Claims 23, 24 and 34 are objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Since Claims 23 and 24 depend from the independent Claim 1, Applicant respectfully submits that Claims 23 and 24 are also patentable as they contain the same limitations as the independent Claim 1.

Since Claim 34 depends from the independent Claim 32, Applicant respectfully submits that Claim 34 is also patentable as it contains the same limitations as the independent Claim 32.

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For the reasons given above, the Applicant respectfully submits that Claims 1, 4 and 6-35 are all in condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, he is encouraged to call the undersigned at (408) 530-9700 to discuss them so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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